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is often backed by the silent threat of a strike. Although some American cases declare that the tendency is to limit the rule of *Allen v. Flood* to acts of an individual (*Allis-Chalmers Co. v. Iron Moulder's Union*, 150 Fed. 155), the instant case draws no difference between inducements by individuals and by combinations, except that it says "it is much easier to infer pressure or coercion in the case of a number of persons."

**EVIDENCE—BURDEN OF PROOF—RECEIPT IN FULL.**—In an action to recover the balance due on goods sold to the defendant by the plaintiff, the former pleaded payment and set out in his answer a receipt in full given by the plaintiff and a letter acknowledging full payment of the indebtedness. The plaintiff filed a reply alleging that the receipt was given and the letter written through mistake, and that payment had not in fact been made. *Held*, the burden of proving payment rests upon the defendant, and this burden is not shifted or affected by the affirmative allegations of the plaintiff that a mistake had been made in giving the receipt and in writing the letter. *Illinois Steel Bridge Co. v. Wayland*, (Kans., 1920), 192 Pac. 752.

The term "burden of proof" in civil cases is frequently used to signify two wholly different duties: first, the duty incumbent upon a party to establish by a preponderance of evidence those ultimate facts which he must allege in order to show his cause of action or his affirmative defense; secondly, the duty of going forward with the evidence in order to prevent a verdict in favor of the opponent because of the latter's then existing preponderance of evidence. Authorities generally hold that the party pleading payment has the burden of proof in the first sense above given, i. e., in order to take advantage of this affirmative defense he must prove by a preponderance of evidence the ultimate fact of payment as alleged. When a party introduces a receipt in full as evidence of payment the courts are not in accord as to where the "burden of proof" lies. Their disagreement is due primarily to two causes: first, a failure on the part of the courts to designate or define clearly the sense in which the term "burden of proof" is used; secondly, a difference in opinion as to the substantive effect of evidence of a receipt in full. Statements are often found that a party attempting to explain or impeach a receipt in full has the "burden of proof", and these seem to be correct when by "burden of proof" is meant the duty of going forward with evidence in order to offset the "prima facie" defense of the party pleading payment. *Ramsdell v. Clark*, 20 Mont. 103; *Guyette v. Bolton*, 46 Vt. 228. Some courts, however, apparently wishing to give a receipt in full exceptional force as evidence, hold that unless the party disputing the receipt shows by a preponderance of evidence that it is invalid as such, "the receipt must have its prima facie effect." *Levi v. Karrick*, 13 Iowa 344; *Winchester v. Grosvenor*, 44 Ill. 425; *Neal v. Handley*, 116 Ill. 418. On principle, the latter doctrine is illogical, since the burden of proof in the sense of a duty to prove the truth of certain facts is dependent on the allegations properly set up in the pleading and not on matters introduced in evidence. The better rule, followed in the principal case, is to the effect that one pleading payment has the burden of proving the ultimate fact of payment, and that this burden is not shifted

by either pleading or introducing evidentiary matter, and this is in accordance with the elementary principle that the burden of proof is ordinarily determined by the issues properly raised by the pleadings. *Mitchell v. Mitchell*, 18 Wkly. Note Cas. (Pa.) 439; *Shrader v. U. S. Glass Co.*, 179 Pa. 623; *Terryberry v. Woods*, 69 Vt. 94. In the principal case the incorrect pleading accentuated the difficulties of placing the "burden of proof". The defendant, besides setting up the ultimate fact of payment, also pleaded evidentiary matters, setting out the receipt and the letter acknowledging payment in full. The plaintiff in his reply, besides denying that the debt was in fact paid, which raised the real issue in the case, undertook to confess and avoid the evidentiary matter alleged by the defendant in support of the allegation of payment. But incorrectly pleading evidentiary matters could not properly affect the burden of proving the ultimate facts in issue in the case. The minority opinion fails to distinguish between substantial confession and avoidance of the ultimate fact of payment and a formal confession and avoidance of evidentiary matters improperly alleged in the answer in support of the defense.

INCOME TAX—INHERITANCE TAX PAID UNDER THE NEW YORK TRANSFER ACT IS NOT DEDUCTIBLE FROM NET INCOME IN COMPUTING INCOME TAX LIABILITY.—Plaintiff sued for the amount overpaid as income tax which should have been deducted from the amount of the entire tax, in case an inheritance tax paid on the estate inherited from her father is within the clause of the act of Congress providing that there shall be allowed as deductions from net income, "All national, state, county, school, and municipal taxes, \* \* \*". *Held*, however, that a collateral inheritance tax levied under the laws of the state of New York is paid for the privilege of transmitting the property by will, and does not constitute such an item as is allowable as a deduction in the return of the beneficiary thereof. *Prentiss v. Eisner*, (June 16, 1920), 267 Fed. 16.

This application of the law of inheritance to the question of income tax returns brings up the entire subject of the nature of death duties. At common law no right to will real property existed, and, except as this result was achieved by means of uses, no such right was exercised until the *STATUTE OF WILLS*, (32 Henry VIII). Hence, this right was entirely statutory and subject to any restrictions that legislatures might see fit to impose. Thus all sorts of inheritance taxes,—legacy taxes, stamp duties, privilege taxes, have been generally regarded as taxes, not upon the corpus of the property that has been devised, but upon the right to transmit or receive the property by devise or will. *Knowlton v. Moore*, 178 U. S. 41, 20 Sup. Ct. 747; *State v. Dunlap*, 28 Idaho 784, 156 Pac. 1141; *In re Terry's Estate*, 218 N. Y. 218, 112 N. E. 931. For a general treatment see 33 L. R. A. (N. S.) 606. In the principal case the particular question is whether the tax is levied upon the power to transmit or upon the privilege to receive property by devise. If a tax upon the privilege to receive property by inheritance, then plaintiff, as recipient of the inheritance, has been taxed and should be able to claim an exemption, but if the tax is upon the power to transmit, then the tax has been